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Attorneys for Defendant
ROYAL INDEMNITY COMPANY
as successor in interest to
Royal Insurance Company of America
(improperly sued as "Royal Insurance Company of America")

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA - San Francisco Division

AIU INSURANCE COMPANY, a New
York corporation,

Plaintiff

v.

ACCEPTANCE INSURANCE
COMPANY, a Delaware corporation,
TIG SPECIALTY INSURANCE
COMPANY, a California corporation,
ROYAL INSURANCE COMPANY OF
AMERICA, a Delaware corporation,
AMERICAN SAFETY RISK
RETENTION GROUP, IND., a
Vermont corporation, and DOES 1-10,
INCLUSIVE,

Defendants.

Case No.: C 07 5491 PJH

ANSWER AND AFFIRMATIVE
DEFENSES OF DEFENDANT
ROYAL INDEMNITY COMPANY

COMPLAINT FILED:
October 29, 2007

1 Defendant Royal Indemnity Company as successor in interest to Royal
2 Insurance Company of America (improperly sued as "Royal Insurance Company
3 of America") ("Royal") hereby answers the Complaint for Declaratory Relief of
4 Plaintiff AIU Insurance Company ("AIU") as follows:

5 **JURISDICTION**

6 1. Answering Paragraph 1 of the Complaint, Royal lacks sufficient
7 information to form a belief as to the truth of the allegations contained in
8 Paragraph 1, and on that basis denies each and every allegation contained therein.

9 2. Answering Paragraph 2 of the Complaint, Royal admits only that
10 some of the underlying lawsuits which give rise to this lawsuit were filed in the
11 County of San Mateo, California and denies each and every remaining allegation in
12 Paragraph 2.

13 3. Answering Paragraph 3 of the Complaint, Royal admits only that AIU
14 is seeking declaratory relief and that it lacks sufficient information to form a belief
15 as to the truth of the remaining allegations contained in Paragraph 3, and on that
16 basis denies each and every allegation contained therein.

17 **PARTIES**

18 4. Answering Paragraph 4 of the Complaint, Royal lacks sufficient
19 information to form a belief as to the truth of allegations contained in Paragraph 4,
20 and on that basis denies each and every allegation contained therein.

21 5. Answering Paragraph 5 of the Complaint, Royal lacks sufficient
22 information to form a belief as to the truth of allegations contained in Paragraph 5,
23 and on that basis denies each and every allegation contained therein.

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1 12. Answering Paragraph 12 of the Complaint, Royal lacks sufficient
2 information to form a belief as to the truth of allegations contained in Paragraph
3 12, and on that basis denies each and every allegation contained therein.

4 13. Answering Paragraph 13 of the Complaint, Royal lacks sufficient
5 information to form a belief as to the truth of allegations contained in Paragraph
6 13, and on that basis denies each and every allegation contained therein.

7 14. Answering Paragraph 14 of the Complaint, Royal lacks sufficient
8 information to form a belief as to the truth of allegations contained in Paragraph 14
9 and on that basis denies each and every allegation contained therein.

10 15. Answering Paragraph 15 of the Complaint, Royal admits only that it
11 issued the following insurance policies for the periods indicated: (1) Policy No.
12 PTY 441053 effective for the period March 1, 1996 to March 1, 1997; (2) Policy
13 No. PTS 443208 effective for the period March 1, 1996 to March 1, 1998; (3)
14 Policy No. PTR 457882 effective for the period March 1, 1998 to March 1, 1999;
15 and (4) Policy No. PTR 4578820099 effective for the period March 1, 1999 to
16 March 1, 2000, each which policy speaks for itself. Royal denies each and every
17 remaining allegation in Paragraph 15.

18 16. Answering Paragraph 16 of the Complaint, Royal lacks sufficient
19 information to form a belief as to the truth of allegations contained in Paragraph
20 16, and on that basis denies each and every allegation contained therein.

21 17. Answering Paragraph 17 of the Complaint, Royal lacks sufficient
22 information to form a belief as to the truth of allegations contained in Paragraph
23 17, and on that basis denies each and every allegation contained therein.

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1 18. Answering Paragraph 18 of the Complaint, Royal lacks sufficient
2 information to form a belief as to the truth of allegations contained in Paragraph
3 18, and on that basis denies each and every allegation contained therein.

4 **THE UNDERLYING EVENTS**

5 19. Answering Paragraph 19 of the Complaint, Royal admits only that
6 Rylock was engaged in the business of window manufacturing; that Rylock is
7 alleged to have installed windows in home located in California and elsewhere;
8 and that Rylock has been named as defendant and/or cross-defendant in lawsuits in
9 which homeowners alleged that Rylock's windows were defective and that such
10 defects lead to water intrusion resulting in property damage. Except as expressly
11 admitted herein, Royal lacks sufficient information to form a belief as to the truth
12 of allegations contained in Paragraph 19, and on that basis denies each and every
13 allegation contained therein.

14 20. Answering Paragraph 20 of the Complaint, Royal admits only that
15 Rylock tendered the defense and indemnity of certain lawsuits in which Rylock
16 was named a defendant and/or cross-defendant to Royal. Except as expressly
17 admitted herein, Royal lacks sufficient information to form a belief as to the truth
18 of allegations contained in Paragraph 20, and on that basis denies each and every
19 allegation contained therein.

20 21. Answering Paragraph 21 of the Complaint, Royal lacks sufficient
21 information to form a belief as to the truth of allegations contained in Paragraph
22 19, and on that basis denies each and every allegation contained therein.

23 22. Answering Paragraph 22 of the Complaint, Royal admits only that
24 Relock referenced the court decision *Armstrong World Industries, Inc. v. Aetna*
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1 *Casualty & Surety Co*, (1996) 45 Cal.App.4th 1 in certain correspondence it sent to
2 Royal and other insurance companies and denies each and every other allegation
3 contained in Paragraph 22 of the Complaint.

4 23. Answering Paragraph 23 of the Complaint, Royal admits only that the
5 limits of the Royal policies Policy No. PTY 441053 effective for the period March
6 1, 1996 to March 1, 1997, Policy No. PTS 443208 effective for the period March
7 1, 1996 to March 1, 1998, Policy No. PTR 457882 effective for the period March
8 1, 1998 to March 1, 1999, and Policy No. PTR 4578820099 effective for the period
9 March 1, 1999 to March 1, 2000, each which policy speaks for itself, and each of
10 which has been, or very soon will be, exhausted through payment of settlements or
11 judgments made on behalf of Rylock and that upon exhaustion of the Royal
12 policies the AIU excess policies are triggered requiring AIU to defend and
13 indemnify Rylock in all outstanding lawsuits and claims. Except as expressly
14 admitted herein, Royal lacks sufficient information to form a belief as to the truth
15 of allegations contained in Paragraph 23, and on that basis denies each and every
16 allegation contained therein.

17 24. Answering Paragraph 24 of the Complaint, Royal admits only that the
18 limits of the Royal policies Policy No. PTY 441053 effective for the period March
19 1, 1996 to March 1, 1997, Policy No. PTS 443208 effective for the period March
20 1, 1996 to March 1, 1998, Policy No. PTR 457882 effective for the period March
21 1, 1998 to March 1, 1999, and Policy No. PTR 4578820099 effective for the period
22 March 1, 1999 to March 1, 2000, each which policy speaks for itself, and each of
23 which has been or very soon will be, exhausted through payment of settlements or
24 judgments made on behalf of Rylock. Royal denies that its policies have not been
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1 properly exhausted and denies that the Royal policies may be “refreshed” by any
2 amounts that may be owed to Rylock by any other insurer. Rylock denies that the
3 AIU excess policies will not be triggered upon exhaustion of the Royal policies.
4 Royal contends that AIU to defend and indemnify Rylock in all outstanding
5 lawsuits and claims filed against Rylock upon exhaustion of the Royal policies.
6 Except as expressly admitted herein, Royal lacks sufficient information to form a
7 belief as to the truth of allegations contained in Paragraph 24, and on that basis
8 denies each and every allegation contained therein.

9 **FIRST CLAIM FOR RELIEF**

10 **(For Declaratory Relief Against American Safety)**

11 25. Answering Paragraph 25 of the Complaint, Royal repeats and
12 incorporates by reference its answers to Paragraphs 1-24 above as if they were set
13 forth herein.

14 26. Answering Paragraph 26 of the Complaint, Royal lacks sufficient
15 information to form a belief as to the truth of allegations contained in Paragraph
16 26, and on that basis denies each and every allegation contained therein.

17 27. Answering Paragraph 27 of the Complaint, Royal has no obligation to
18 either admit or deny such allegations contained therein as they are directed only to
19 American Safety and not to Royal.

20 28. Answering Paragraph 28 of the Complaint, Royal lacks sufficient
21 information to form a belief as to the truth of allegations contained in Paragraph
22 28, and on that basis denies each and every allegation contained therein.

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SECOND CLAIM FOR RELIEF

**(For Declaratory Relief Against Acceptance, TIG, Royal, American Safety
and DOES 1-10)**

29. Answering Paragraph 29 of the Complaint, Royal repeats and incorporates by reference its answers to Paragraphs 1-28, above as if set forth fully herein.

30. Answering Paragraph 30 of the Complaint, Royal admits only that there is a dispute or controversy between the parties regarding AIU's coverage obligations to Rylock and whether the Royal policies have been exhausted. Royal denies each and every remaining allegation contained in Paragraph 30.

31. Answering Paragraph 31 of the Complaint, Royal admits only that there is a dispute or controversy between the parties regarding AIU's coverage obligations to Rylock and whether the Royal policies have been exhausted. Royal denies each and every remaining allegation contained in Paragraph 31.

32. Answering Paragraph 32 of the Complaint, Royal admits only that there is a dispute or controversy between the parties regarding AIU's coverage obligations to Rylock and whether the Royal policies have been exhausted. Royal denies each and every remaining allegation contained in Paragraph 32.

PRAYER

Royal denies that AIU is entitled to the relief sought by its Complaint.

AFFIRMATIVE DEFENSES

By way of further answer, and by way of affirmative defenses, Royal alleges as follows:

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FIRST AFFIRMATIVE DEFENSE

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2 1. AIU's claims against Royal are barred, in whole or in part, to the
3 extent that AIU fails to state a claim against Royal upon which relief may be
4 granted.

SECOND AFFIRMATIVE DEFENSE

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6 2. AIU's claims against Royal are barred, in whole or in part, to the
7 extent that AIU fails to state facts sufficient to constitute a cause of action against
8 Royal.

THIRD AFFIRMATIVE DEFENSE

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10 3. AIU's claims against Royal against Royal are barred because the
11 limits of the Royal policies Policy No. PTY 441053 effective for the period March
12 1, 1996 to March 1, 1997, Policy No. PTS 443208 effective for the period March
13 1, 1996 to March 1, 1998, Policy No. PTR 457882 effective for the period March
14 1, 1998 to March 1, 1999, and Policy No. PTR 4578820099 effective for the period
15 March 1, 1999 to March 1, 2000, each which policy speaks for itself, and each of
16 which has been, or very shortly will be exhausted through payment of settlements
17 or judgments Royal has made on behalf of Rylock.

FOURTH AFFIRMATIVE DEFENSE

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19 4. AIU's claims against Royal are barred because Royal has no
20 obligation to obtain contribution from any other insurance company, person or
21 entity relative to the defense and indemnification of Rylock.

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FIFTH AFFIRMATIVE DEFENSE

5. AIU's claims against Royal are barred because, once the Royal policies have been exhausted through payment of settlements or judgments, Royal has no further obligations to defend or indemnify Rylock.

SIXTH AFFIRMATIVE DEFENSE

6. AIU's claims against Royal are barred, in whole or in part, pursuant to the terms, provisions, definitions, conditions, exclusions, endorsements, and limitations set forth in Royal Policies.

SEVENTH AFFIRMATIVE DEFENSE

7. AIU's claims against Royal are barred because once the Royal policies have been exhausted through payment of settlements or judgment, they may not be retroactively "refreshed" by any amounts that may be owed to Rylock by any other insurer.

EIGHTH AFFIRMATIVE DEFENSE

8. AIU's claims against Royal are barred, in whole or in part, to the extent the applicable statutes of limitations have expired.

NINTH AFFIRMATIVE DEFENSE

9. AIU's claims against Royal are barred, in whole or in part, to the extent the doctrine of laches applies.

TENTH AFFIRMATIVE DEFENSE

10. AIU's claims against Royal are barred, in whole or in part, to the extent the doctrine of waiver applies.

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ELEVENTH AFFIRMATIVE DEFENSE

11. AIU's claims against Royal are barred, in whole or in part, to the extent the doctrine of estoppel applies.

TWELFTH AFFIRMATIVE DEFENSE

12. AIU's claims against Royal are barred, in whole or in part, to the extent AIU failed to exercise reasonable diligence to mitigate its damages.

THIRTEENTH AFFIRMATIVE DEFENSE

13. AIU has suffered no damages.

FOURTEENTH AFFIRMATIVE DEFENSE

14. AIU's claims against Royal are barred, in whole or in part, to the extent the doctrine of unclean hands applies.

FIFTEENTH AFFIRMATIVE DEFENSE

15. AIU's claims against Royal are barred, in whole or in part, to the extent any duty or performance of Royal has been excused by reason of failure of consideration, breach, prevention of performance, frustration of purpose, and/or acceptance.

SIXTEENTH AFFIRMATIVE DEFENSE

16. AIU's claims against Royal are barred, in whole or in part, to the extent any duty or obligation that Royal may have had under contract or by operation of law has been performed, discharged, excused, or rendered impossible or impractical to perform by AIU and/or other persons or entities.

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1 **SEVENTEENTH AFFIRMATIVE DEFENSE**

2 17. AIU's claims against Royal are barred, in whole or in part, to the
3 extent AIU seeks reimbursement under the Royal Policies for obligations
4 assumed, or monies voluntarily paid, by AIU.

5 **EIGHTEENTH AFFIRMATIVE DEFENSE**

6 18. Royal reserves its right to assert further and additional affirmative
7 defenses and policy defenses based upon information that may be provided in
8 discovery or other investigation in the course of this litigation.

9 WHEREFORE, having fully answered AIU's Complaint, and having
10 asserted its affirmative defenses thereto, Royal respectfully prays for judgment
11 against AIU as follows:

12 1. That AIU take nothing against Royal by reason of the Complaint on
13 file herein;

14 2. That this Court adjudge, determine and decree that AIU is not entitled
15 to the relief sought in its Complaint;

16 3. That AIU is not entitled to cost of suit, reasonable attorneys' fees or
17 any other relief as to its Complaint;

18 4. That this Court adjudge, determine and decree that Royal is entitled to
19 its costs and disbursements incurred in this action including, but not limited to,
20 reasonable attorneys' fees; and

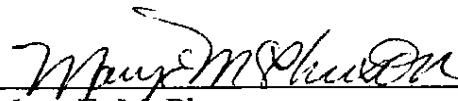
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1 5. For such other and further relief as the Court deems just and proper.

2 Dated: December 11, 2007

3 TRESSLER, SODERSTROM, MALONEY & PRIESS, LLP

4
5 By:



Mary E. McPherson

Angela Pak

Attorneys for Defendant

ROYAL INDEMNITY COMPANY

as successor in interest to

Royal Insurance Company of America

(improperly sued as "Royal Insurance Company of
America")

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12 LA-#100385 (1458-442)